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Attorneys for Defendants, LOUIS P. FANCHER, NEW BERN TRANSPORT CORPORATION, BOTTLING GROUP, LLC i/p/a "PEPSI BOTTLING GROUP, LLC"

Our File No. 149-10030 MKT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**FREDERICK A. TUPKIELEWICZ and
FELIX O. RAMIREZ,**

vs.

**LOUIS P. FANCHER, NEW BERN
TRANSPORT CORPORATION, PEPSI
BOTTLING GROUP, LLC, and JOHN
DOES 1-10 (representing presently
unidentified individuals, businesses,
and/or corporations who owned,
operated, maintained, supervised,
designed, constructed, repaired,
and/or controlled the vehicle in
question or otherwise employed the
defendant),**

Defendants,

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. MID-L-977-12**

CIVIL ACTION

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441 (B)**

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEW JERSEY AND TO PLAINTIFF FREDERICK A.
TUPKIELEWICZ AND FELIX O. RAMIREZ AND ITS ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that Defendants, Louis P. Fancher, New Bern Transport Corporation, Bottling Group, LLC i/p/a "Pepsi Bottling Group, LLC" hereby removes the

above-captioned action to the United States District Court, District of New Jersey, Newark Division, based on the following facts:

1. On February 6, 2012, an action was commenced in the Superior Court of New Jersey, County of Middlesex, entitled Frederick A. Tupkielewicz and Felix O. Ramirez v. Louis P. Fancher, New Bern Transport Corporation, Pepsi Bottling Group, LLC, and John Does 1-10, Docket No. MID-L-977-12 (Complaint, Jury Demand, Demand for Discovery of Insurance, Notice to Produce, Demand for Answers to Interrogatories). A copy of the Complaint and supporting papers are attached as Exhibit A to this Notice of Removal.

2. Defendant, New Bern Transport Corporation was personally served with the Complaint on March 1, 2012.

3. The Petition for removal is timely pursuant to 28 U.S.C. § 1446(b) and the Federal Rules of Civil Procedure 6(a). While this removal is filed more than thirty (30) days from the receipt of the Complaint, thirty (30) days was March 31, 2012 which was a Saturday. Therefore, the filing of this action on April 2, 2012 would be timely.

4. As will be demonstrated, this matter has diversity and, therefore, should be transferred to the Federal Court. As such, this is a case over which this Court has original jurisdiction under 28 U.S.C. § 1441 and removal is, therefore, appropriate.

5. According to the Complaint of plaintiffs, Frederick R. Tupkielewicz and Felix O. Ramirez reside at 468 West End Avenue, Apt. 5L, Borough of North Plainfield, County of Somerset, in the State of New Jersey.

6. Defendant New Bern Transport Corporation is incorporated in the State of Delaware and has a principal location at 1 Pepsi Way, Somers, New York 10589-2212.

7. Defendant Lewis P. Fancher currently resides at 19 Ridgeway Avenue, Norwood, Pennsylvania 19074.

8. Defendant Bottling Group, LLC is incorporated in the State of Delaware and has a principal location at 1 Pepsi Way, Somers, New York 10589-2212.

9. Based on the locations of all parties, there is diversity with respect to jurisdiction for the various parties.

10. According to the Complaint, the plaintiff claims bodily injuries. Further, to date, medical benefits have been paid in the amount of \$87,821.89 on behalf of Frederick Tupkielewicz. Attached hereto as Exhibit B is a copy of the medical benefits paid to date. Therefore, the matter in dispute is over the statutory requirement of \$75,000.

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) insofar as plaintiff alleges damages in excess of \$75,000 and constructively alleges complete diversity of citizenship of all parties. The allegations of the original Complaint make clear that none of the named defendants reside in New Jersey where plaintiff resides.

12. Copies of all pleading, processes and Orders filed in the State Court action (and not previously referenced) are attached to this Notice of Removal as Exhibit C.

13. Defendants will properly serve all of the relevant documents on plaintiff via New Jersey Lawyers Service.

14. Pursuant to 28 U.S.C. § 1446(d), "Promptly after filing of such Notice of Removal of a civil action, defendant shall give written notice thereof to all adversary parties and shall file a copy of the Notice with the Clerk of [Middlesex County in the State of New Jersey], which shall effect removal and the State Court shall proceed no further unless and until the case is remanded."

RONAN, TUZZIO & GIANNONE
Attorneys for defendants,
Louis P. Fancher, New Bern Transport
Corporation, Pepsi Bottling Group, LLC

BY:

A handwritten signature in blue ink, appearing to read 'MKT', is written over a horizontal line.

MICHAEL K. TUZZIO

DATED: April 2, 2012